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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN: 3245-AG45

Small Business Size Standards: Finance and Insurance and Management of Companies and Enterprises

AGENCY: U.S. Small Business Administration

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is increasing small business size standards for 36 industries in North American Industry Classification System (NAICS) Sector 52, Finance and Insurance, and for two industries in NAICS Sector 55, Management of Companies and Enterprises. In addition, SBA is changing the basis for measuring size from assets to annual receipts for one industry in NAICS Sector 52, namely, NAICS 522293, International Trade Financing. Finally, SBA is deleting NAICS 525930, Real Estate Investment Trusts, from its table of size standards. The U. S. Office of Management and Budget (OMB) included the financial activities formerly included in NAICS 525930 in NAICS 531110, NAICS 531120, NAICS 531130, NAICS 531190, and NAICS 525990. As part of its ongoing comprehensive size standards review, SBA evaluated all receipts based and assets based size standards in NAICS Sectors 52 and 55 to determine whether they should be retained or revised. SBA did not review the 1,500-employee size standard for NAICS 524126, Direct Property and Casualty Insurance Carriers, which it will review in the near future

with other employee based size standards. This final rule is one of a series of final rules that will review size standards of industries grouped by NAICS Sectors.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

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SUPPLEMENTARY INFORMATION:

Introduction:

To determine eligibility for federal small business assistance programs, SBA establishes numeric small business definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size – average annual receipts and number of employees. However,, financial assets, electric output, and refining capacity are used as size measures for a few specialized industries. For example, currently six size standards in NAICS Sector 52 are based on total assets. In addition, SBA's Small Business Investment Company (SBIC), 7(a), and Certified Development Company (CDC or 504) Loan Programs determine small business eligibility using either the industry based size standards or alternative tangible net worth and net income based size standards. When SBA began the comprehensive size standards review in 2007, there were 41 different size standards, covering 1,141 NAICS industries and 18 sub-industry activities (i.e., "exceptions" in SBA's table of size standards). Of these different size standards, 31 were based on average annual receipts, seven based on number of employees, and three based on other measures. Presently, there are a total of 1,031 size standards, 516 of which are based on average annual receipts, 499 based on number of employees, 10 based on megawatt hours, and six based on average assets.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, and, in particular with changes in the federal contracting marketplace and industry structure. SBA last conducted a comprehensive review of size standards during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to a few specific industries in response to requests from the public and federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the Federal Register on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the federal marketplace since the last comprehensive review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to determine whether existing size standards should be retained or revised based on current data on industry structure and federal market.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and to review -all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

SBA has chosen not to review all size standards at one time. Rather, it is reviewing groups of related industries on a Sector by Sector basis.

As part of SBA's comprehensive review of size standards, the Agency reviewed all receipts based and assets based size standards in NAICS Sector 52, Finance and Insurance, and in NAICS code Sector 55, Management of Companies and Enterprises, to determine whether the existing size standards should be retained or revised. After the review, on September 11, 2012, SBA published a proposed rule in the Federal Register (76 FR 63216) seeking public comment on its proposal to increase the assets based and receipts based size standards for 37 industries in NAICS Sector 52 and two industries in NAICS Sector 55 and to change the size measure from average assets to average receipts for one industry in NAICS Sector 52. In that proposed rule, SBA did not address the 1,500-employee size standard for NAICS 524126, Direct Property and Casualty Insurance Carriers. SBA will review NAICS 524126 in the near future with other employee based size standards.

In conjunction with the current comprehensive size standards review, SBA developed a "Size Standards Methodology" for developing, reviewing, and modifying size standards, when necessary. SBA published the document on its website at www.sba.gov/size for public review and comment and also included it as a supporting document in the electronic docket of the September 11, 2012 proposed rule for NAICS

Sector 52 and Sector 55 (77 FR 55737) at www.regulations.gov (Docket SBA-2012-0015, RIN 3245-AG45).

In evaluating an industry's size standard, SBA examines its characteristics (such as average firm size, startup costs, industry competition, and distribution of firms by size) and the level and small business share of federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each industry in NAICS Sectors 52 and 55 that have receipts-based size standards, mostly using a special tabulation obtained from the U. S. Bureau of the Census based on its 2007 Economic Census (the latest available).

To evaluate industries in NAICS Sector 52 that have assets based size standards (except for credit unions), SBA evaluated the data from the Statistics on Depository Institutions database of the Federal Deposit Insurance Corporation between 1984 and 2011 (http://www2.fdic.gov/sdi/main.asp) and data on financial institutions that participate in the Department of the Treasury's Minority Bank Deposit Program, compiled by the Federal Reserve Board (http://www.federalreserve.gov/releases/mob/). For the credit union industry, SBA examined the data from call reports for the fourth quarters of 1994 and 2011 from the National Credit Union Administration website (http://www.ncua.gov/DataApps/QCallRptData/Pages/CallRptData.aspx).

To calculate average assets, SBA used sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2008-2010.

To evaluate the federal marketplace, SBA analyzed the level and small business share of federal contracts in each of those industries using the data from the Federal Procurement Data System – Next Generation (FPDS-NG) for fiscal years 2008 to 2010.

To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its guaranteed loan programs for fiscal years 2008 to 2010.

SBA's "Size Standards Methodology" provides a detailed description of its analyses of various industry and program factors and data sources, and how the Agency uses the results to derive size standards. In the proposed rule, SBA detailed how it applied its "Size Standards Methodology" to review and modify, where necessary, the existing receipts based and assets based standards for industries in NAICS Sectors 52 and 55. SBA sought comments from the public on a number of issues concerning its "Size Standards Methodology," such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's applications of anchor size standards are appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider.

In the proposed rule, SBA also sought comments on its proposal to increase the receipts based and assets based size standards for 37 industries in NAICS Sector 52 and two industries in NAICS Sector 55 and to change the measure of size from average assets to average receipts for NAICS 522293, International Trade Financing. Specifically, SBA requested comments on whether the size standards should be revised as proposed and whether the proposed revisions are appropriate. SBA also invited comments on whether its proposed eight fixed levels for receipts based size standards are appropriate and whether the Agency should adopt common size standards for certain Industry Groups and Subsectors in NAICS Sector 52.

SBA's analyses suggested a possible lowering of one industry size standard in NAICS Sector 52. That industry is NAICS 524210, Insurance Agencies and Brokerages. However, SBA explained in the proposed rule that lowering size standards would reduce the number of firms that are currently eligible to participate in federal small business assistance programs and would run counter to what the Federal Government and SBA are doing to help small businesses and create jobs. SBA had proposed to retain the current size standard for that industry and requested comments on whether the Agency should lower the size standard for that industry. SBA received no comment opposing its proposal to retain the size standard for that industry even if the data supported lowering it. SBA has, therefore, determined that size standards that might be lowered based on its analyses alone should be retained at their current levels.

<u>Summary of Comments</u>

SBA received five comments on its proposal to increase the asset and receipts based size standards for 37 industries and to change the size measure from average assets to average receipts for one industry in NAICS Sector 52. SBA did not receive any comments on its proposal to increase the size standards for the two industries in NAICS Sector 55. Four commenters focused on the proposed increase to the size standard for credit unions (NAICS 522130) from $175 million in average assets to $500 million, while one commented on the size standard for Consumer Lending (NAICS 522291), which SBA proposed to increase from $7 million in average annual receipts to $35.5 million. All commenters generally supported SBA's effort to review and update size standards in NAICS Sector 52. These comments can be viewed at www.regulations.gov (Docket SBA-2012-0015, RIN 3245-AG45), and are summarized and discussed below.

A national association representing federal credit unions commented on the proposed rule by strongly supporting the proposed increase in the size standard for credit unions from $175 million in assets to $500 million. The commenter stated that the current industry data support this increase. It noted that the Consumer Financial Protection Bureau (CFPB) created under the Dodd-Frank Wall Street Reform and Protection Act (Dodd-Frank Act) uses SBA's size standards to assess the impact of its regulations on small entities as required by the Small Business Regulatory Enforcement and Flexibility Act (SBREFA). The association concluded that the proposed increase would offer credit unions more voices in the SBREFA process.

The next comment, submitted on behalf of the Credit Union National Association (CUNA) representing 90 percent of state and federal credit unions in the U.S., was also in strong support of SBA's proposal to increase the size standard for credit unions from $175 million in assets to $500 million. The commenter, similar to the first commenter, stated that the proposed size standard, if adopted, will permit more credit unions to benefit from provisions that require federal agencies to assess and minimize the impact of regulatory costs on small entities under the Regulatory Flexibility Act (RFA), SBREFA and Executive Orders 13272, 13653, and 13579. The commenter added that institutions below $500 million in assets lack the necessary personnel (such as a full-time compliance officer) to meet the compliance requirements.

The third and fourth commenters were members of the CUNA, representing credit unions and their members at the state levels. Both commenters strongly supported SBA's proposal to increase the credit unions' size standard to $500 million in assets. They echoed the same reasons as those provided by industry associations: that a higher size standard will allow more credit unions to participate in federal rulemaking process under RFA and SBREFA.

All four commenters representing national and state associations and other groups of credit unions and their interests strongly supported SBA's proposed increase of the size standard for credit unions from $175 million in assets to $500 million. They were uniform in their reasons for support that the proposed size standard will offer more credit unions and their members a greater voice in the SBREFA and RFA processes. Thus, in consideration of these comments, SBA is adopting, as proposed, $500 million in assets as the size standard for credit unions (NAICS 522130).

The above commenters also urged SBA and its Office of Advocacy to support a substantial increase in the size standard that the National Credit Union Administration (NCUA) uses to define small entities for its programs. They also urged NCUA to review its size standards more frequently and use the same SBA established size threshold as other federal agencies for purposes of the RFA and similar regulatory analyses. While SBA and its Office of Advocacy promote the interests of small entities, these issues are beyond the scope of this rule. SBA's size standards regulations provide that for purposes of conducting an RFA federal agencies may, after consultation with SBA's Office of

Advocacy, establish a size standard different from SBA's size standards, one that is more appropriate for its analysis (13 CFR 121.903(c)).

The fifth comment was from the organization representing lenders that offer online consumer short-term loans and related products and services, including finance companies, mortgage bankers, payday lenders, auto finance companies, and other specialty finance companies, which fall under NAICS 522291, Consumer Lending. These are non-depository entities and are subject to, as the commenter indicated, federal consumer protection regulations. Although the association supported SBA's proposal to increase the size standard for NAICS 522291 from $7 million in average annual receipts to $35.5 million, it contended that for size standards purposes this industry should be treated the same as depository financial institutions, because both depository and non-depository institutions operate and compete with one another in the same marketplace. It urged SBA to reconsider changing the size standard for NAICS 522291 from receipts to assets and apply the same size standard of $500 million in assets that SBA proposed for all depository institutions and credit cards issuing companies. The commenter argued that "assets" is a better measure of size than "receipts" for all lending institutions.

The commenter stated that SBA's size standards have become more important now than in the past because they are used to determine the supervisory jurisdiction of the CFPB and to determine which companies are permitted to participate on small business panels about certain CFPB's regulations. The commenter added that SBA's table of size standards is a default basis for defining what constitutes a small entity for SBREFA purposes and that neither CFPB nor SBREFA existed when size standards were first created for financial industries. The organization concluded that a common size standard of $500 million in assets for both depository and non-depository institutions will help level the playing field for different types of financial institutions.

SBA does not accept the commenter's recommendation for three reasons. First, when establishing a size standard, SBA considers similarity of products and services provided by different industries and may consider establishing a common size standard for certain closely related industries if supported by industry analysis. With the advent of online banking and lending and the emergence of new financial products and services, SBA agrees that the distinction between depository and non-depository financial institutions may have decreased with respect to types of services and products offered. However, the data show significant differences in the industry structure for depository and non-depository institutions, which does not support the creation of a common size standard, as recommended by the commenter. For example, based on 2007 Economic Census, Depository Institutions averaged 137 employees and $49 million revenue, as compared to 35 employees and $23 million revenue for Non-depository Institutions (excluding the credit card issuing industry for which SBA has an assets based size standard). Firms in the consumer lending industry (NAICS 522291) were even more different, averaging only 28 employees and about $12 million revenue. These results clearly do not support the same size standard for NAICS 522291 as that for depository institutions. Second, assets data are not available for non-depository institutions, while receipts data are readily available from the Economic Census. Third, based on the 2007 Economic Census, under the proposed $35.5 million receipts based size standard, more than 96 percent of firms in NAICS 522291 will qualify as small and be eligible to participate in the SBREFA process and benefit from other provisions to support small entities. For comparison, about 92 percent of firms are considered small under the current $7 million size standard. With the proposed increase, about 175 additional firms that are large under the current size standard for NAICS 522291 will become small and be eligible to participate in the SBREFA process. Thus, SBA is retaining the receipts based size standard for NAICS 522291 and increasing it from $7 million to $35.5 million, as proposed.

Conclusion:

Based on SBA's analyses of relevant industry and program data and the public comments it received on the proposed rule, as discussed above, SBA has decided to increase assets based and receipts based size standards for 37 industries in NAICS Sector 52. Since there were no comments to SBA's proposal to increase the receipts based size standards for the two industries in NAICS Sector 55, SBA is also adopting them as proposed.

Additionally, SBA had proposed to change the size measure from average assets to average receipts for NAICS 522293, International Trade Financing, by replacing the current $175 million assets based size standard with a $35.5 million receipts based size standard. As detailed in the proposed rule, SBA proposed this change based on its review of available industry data. Since SBA received no comments against the proposed change, SBA is adopting the $35.5 million receipts based size standard for NAICS 522293, as proposed. Those industries and their revised size standards are shown Table 1, Summary of Revised Size Standards in NAICS Sectors 52 and 55, below.

Table 1
Summary of Revised Size Standards in NAICS Sectors 52 and 55

| NAICS code | NAICS title | Current size standard ($ million) | Revised size standard ($ million) |
|---|---|---|---|
| 522110 | Commercial Banking [8] | $175 million in assets[8] | $500 million in assets[8] |
| 522120 | Savings Institutions [8] | $175 million in assets[8] | $500 million in assets[8] |
| 522130 | Credit Unions [8] | $175 million in assets[8] | $500 million in assets[8] |
| 522190 | Other Depository Credit intermediation [8] | $175 million in assets[8] | $500 million in assets[8] |
| 522210 | Credit Card Issuing [8] | $175 million in assets[8] | $500 million in assets[8] |
| 522220 | Sales Financing | $7.0 | $35.5 |
| 522291 | Consumer Lending | $7.0 | $35.5 |
| 522292 | Real Estate Credit | $7.0 | $35.5 |
| 522293 | International Trade Financing | $175 million in assets[8] | $35.5 |
| 522294 | Secondary Market Financing | $7.0 | $35.5 |
| 522298 | All Other Non-depository Credit Intermediation | $7.0 | $35.5 |
| 522320 | Financial Transactions Processing, Reserve, and Clearinghouse Activities | $7.0 | $35.5 |
| 522390 | Other Activities Related to Credit Intermediation | $7.0 | $19.0 |
| 523110 | Investment Banking and Securities Dealing | $7.0 | $35.5 |
| 523120 | Securities Brokerage | $7.0 | $35.5 |
| 523130 | Commodity Contracts Dealing | $7.0 | $35.5 |
| 523140 | Commodity Contracts Brokerage | $7.0 | $35.5 |
| 523210 | Securities and Commodity Exchanges | $7.0 | $35.5 |
| 523910 | Miscellaneous Intermediation | $7.0 | $35.5 |
| 523920 | Portfolio Management | $7.0 | $35.5 |
| 523930 | Investment Advice | $7.0 | $35.5 |
| 523991 | Trust, Fiduciary and Custody Activities | $7.0 | $35.5 |
| 523999 | Miscellaneous Financial Investment Activities | $7.0 | $35.5 |
| 524113 | Direct Life Insurance Carriers | $7.0 | $35.5 |
| 524114 | Direct Health and Medical Insurance Carriers | $7.0 | $35.5 |
| 524127 | Direct Title Insurance Carriers | $7.0 | $35.5 |
| 524128 | Other Direct Insurance (except Life, Health and Medical) Carriers | $7.0 | $35.5 |
| 524130 | Reinsurance Carriers | $7.0 | $35.5 |

| | | | |
|---|---|---|---|
| 524291 | Claims Adjusting | $7.0 | $19.0 |
| 524292 | Third Party Administration of Insurance and Pension Funds | $7.0 | $30.0 |
| 524298 | All Other Insurance Related Activities | $7.0 | $14.0 |
| 525110 | Pension Funds | $7.0 | $30.0 |
| 525120 | Health and Welfare Funds | $7.0 | $30.0 |
| 525190 | Other Insurance Funds | $7.0 | $30.0 |
| 525910 | Open-End Investment Funds | $7.0 | $30.0 |
| 525920 | Trusts, Estates, and Agency Accounts | $7.0 | $30.0 |
| 525990 | Other Financial Vehicles | $7.0 | $30.0 |
| 551111 | Offices of Bank Holding Companies | $7.0 | $19.0 |
| 551112 | Offices of Other Holding Companies | $7.0 | $19.0 |

For the reasons stated above and in the proposed rule, SBA has decided to retain the current receipts based size standard for NAICS 524210, Insurance Agencies and Brokerages, for which analytical results suggested lowering it. Maintaining the current size standard for NAICS 524210 is consistent with SBA's recent final rules on NAICS Sector 44-45, Retail Trade (75 FR 61597, (October 6, 2010)); NAICS Sector 72, Accommodation and Food Services (75 FR 61604, (October 6, 2010)); NAICS Sector 81, Other Services (75 FR 61591, (October 6, 2010)); NAICS Sector 54, Professional, Scientific and Technical Services (77 FR 7490 (February 10, 2012)); NAICS Sector 48-49, Transportation and Warehousing (77 FR 10943 (February 24, 2012)); NAICS Sector 51, Information (77 FR 72702 (December 6, 2012)); NAICS Sector 53, Real Estate and Rental and Leasing (77 FR 88747 (September 24, 2012)); NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (77 FR 72691 (December 6, 2012)); NAICS Sector 61, Educational Services (77 FR 58739 (September 24, 2012)); and NAICS Sector 62, Health Care and Social Assistance (77 FR 58755 (September 24, 2012)).

SBA is also retaining the existing receipts based size standard for one industry in NAICS Sector 52 for which the results supported it at its current level. As stated earlier, SBA did not review NAICS 524126, Direct Property and Casualty Insurance Carriers, that has an employee based size standard, which the Agency will review in the near future with other employee based standards. Until then, SBA is retaining the current employee based size standard for that industry.

Finally, SBA is deleting NAICS 525930, Real Estate Investment Trusts (REIT), from its table of size standards because the NAICS code no longer exists. In its 2007 NAICS update, OMB deleted NAICS 525930 and incorporated its various activities in NAICS 525990, NAICS 531110, NAICS 531120, NAICS 531130, and NAICS 531190. SBA has analyzed and addressed the size standards for all of those industries and the activities formerly included in NAICS 525930. In this rule, SBA is increasing the size standard for NAICS 525990 to $30 million. SBA's September 24, 2012 final rule on Sector 53, Real Estate, Rental, and Leasing (77 FR 58747), established a $25.5 million size standard for the other four industries which include REIT activities.

Compliance With Executive Orders 12866, 13563, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601-612).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is not a "significant regulatory action" for purposes of Executive Order 12866. In order to help explain the need of this rule and its potential benefits and costs, SBA is providing below a Cost Benefit Analysis of the rule. This is also not a "major rule" under the Congressional Review Act, 5 U.S.C. 800.

Cost Benefit Analysis

1. Is there a need for the regulatory action?

The size standards revisions in NAICS Sector 52, Finance and Insurance, and NAICS Sector 55, Management of Companies and Enterprises, will better reflect the economic characteristics of small businesses and the Federal Government marketplace in those Sectors. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To determine the intended beneficiaries of these programs, SBA establishes distinct definitions of which businesses are deemed small businesses. The Small Business Act (the Act) (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The Small Business Jobs Act of 2010 also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this final rule and the proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this final rule is gaining eligibility for federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), Economically Disadvantaged Women Owned Small Businesses (EDWOSB) and service-disabled veteran-owned small businesses (SDVOSB). These programs help small businesses become more knowledgeable, stable, and competitive. Other federal agencies may also use SBA's size standards for a variety of other regulatory and program purposes. SBA is increasing 33 receipts based size standards in Sector 52 and Sector 55. SBA estimates that more than 5,400 firms, not small under current size standards, will become small and therefore eligible for these programs. That is about 2.2 percent of all firms classified as small under the current receipts based size standards in NAICS Sectors 52 and 55. This will increase the small business share of total receipts of all industries with receipts based size standards within NAICS Sectors 52 and 55 from 5.1 percent under the current size standards to 7.5 percent under the revised size standards. Additionally, due to the increase to the assets based size standard from $175 million to $500 million for four industries in NAICS Sector 52 (i.e., NAICS 522110, 522120, 522190 and 522210), approximately 2,000 additional depository institutions, including about 25 minority owned financial institutions, will qualify as small. This will increase the small business share of total assets in those industries from 2.5 percent under the current assets based size standard to 7 percent for all financial institutions and from 14.4 percent to 33 percent for minority owned institutions. In addition, the increase from $175 million to $500 million in assets will enable about 550 credit unions to obtain small entity status. However, because they are organized as not-for-profit entities, they would not qualify for federal programs intended for small business concerns (see 13 CFR 121.105). They may be eligible for other federal programs and regulatory purposes for which being organized as not-for-profit entities is not a limiting factor.

The following groups will benefit from the revisions to size standards adopted in this rule: (1) some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them to participate in federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; (3) federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs; (4) prime contractors that could benefit from agreements with the minority owned depository institutions in meeting their subcontracting goals and credits; and (5) potentially small business communities could benefit from increased banking activities in the area.

SBA estimates that firms gaining small business status under the revised size standards could receive federal contracts totaling $8 million to $10 million annually under SBA's small business, 8(a), SDB, HUBZone, WOSB and EDWOSB, and SDVOSB Programs, and other unrestricted procurements. The added competition for many of these procurements can also result in lower prices to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) and 504 Loan Programs, based on the fiscal years 2008-2010 data, SBA estimates up to 30 additional loans totaling about $4 million to $5 million in federal loan guarantees could be made to these newly defined small businesses under the revised size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it is impractical to estimate exactly the number and total amount of loans. There are two reasons for this: (1) under the Jobs Act, SBA can now guarantee substantially larger loans than in the past; and (2) the Jobs Act established an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the actual impact of the revised size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster (EID) Loan Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of this impact.

To the extent that those 7,400 newly defined small firms (including 5,400 firms under the receipts based size standards in 33 industries and 2,000 firms under the assets based size standards in four industries) could become active in federal procurement programs, the revised size standards may entail some additional administrative costs to the government associated with there being more bidders on small business procurement opportunities. In addition, there will be more firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the Systems of Award Management's (SAM) Dynamic Small Business Search database, and more firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB and EDWOSB, SDVOSB, and SDB status. Among those newly defined small businesses seeking SBA's assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. SBA believes that these added administrative costs will be minimal because mechanisms are already in place to handle these requirements.

Additionally, some Federal Government contracts may have higher costs. With a greater number of businesses defined as small under the revised size standards, federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB and EDWOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices. In addition, there may be higher costs when more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences.

The size standards revisions may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some federal contracts to small businesses from large businesses. Large businesses may have fewer federal contract opportunities as federal agencies decide to set aside more federal contracts for small businesses. In addition, some federal contracts may be awarded to HUBZone concerns instead of large businesses since these firms may be eligible for a price evaluation preference for contracts when they compete on a full and open basis. Similarly, currently defined small businesses may obtain fewer federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision.

The revisions to the existing size standards in NAICS Sectors 52 and 55 that are adopted in this final rule are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 is included above in the Cost Benefit Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA presented its size standards methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with a number of industry groups to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of Jobs Act tours. The presentation also included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review. Moreover, SBA presented the same information to Department of Defense (DoD) contracting personnel at their annual training conference. It included updates on what size standards SBA was currently reviewing and its plans to review in the future.

Furthermore, when SBA issued the proposed rule, it notified by email the individuals, government procurement personnel, and companies that had in recent years exhibited an interest in size standards for NAICS Sectors 52 and 55 so they could comment.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA's size standards and whether current size standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and federal agencies in preparing the proposed rule and this final rule.

The review of size standards in NAICS Sectors 52 and 55 is consistent with EO 13563, Section 6, calling for retrospective analyses of existing rules. The last comprehensive review of size standards occurred during the late 1970s and early 1980s.

Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and federal agencies. SBA recognizes that changes in industry structure and the federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule will not impose any new reporting or record keeping requirements.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small businesses in NAICS Sector 52, Finance and Insurance, and NAICS Sector 55, Management of Companies and Enterprises. As described above, this final rule may affect small businesses seeking federal contracts, loans under SBA's 7(a), 504 and EID Loan Programs, and assistance under other federal small business programs, as well as subcontracting programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant federal rules that may duplicate, overlap, or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What are the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries in NAICS Sectors 52 and 55. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised standards in this final rule more appropriately reflect the size of businesses that need federal assistance. The Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

SBA estimates that more than 5,400 additional firms will become small because of revisions to receipts based size standards for 33 industries in NAICS Sectors 52 and 55. That represents 2.2 percent of total firms that are small under current receipts based size standards in all industries within these Sectors. This will result in an increase in the small business share of total receipts in those industries from 5.1 percent under the current size standards to 7.5 percent under the revised size standards. Additionally, due to the increase in the assets based size standard for four industries within NAICS Sector 52 about 2,000 additional financial institutions will qualify as small, including about 25 minority owned financial institutions that could be eligible to participate in agreements with prime contractors for subcontracting goals and credits. In addition, about 550 additional credit unions would qualify as small entities under the $500 million assets based size standard, but they would not qualify for federal programs intended for small businesses because they are not-for profit entities. However, they may qualify as small entities for other federal programs and regulatory proposes. The revised size standards will enable more small businesses to retain their small business status for a longer period. Many firms may have lost their eligibility and find it difficult to compete at current size standards with significantly larger companies. The change in size standards, as discussed herein, will have a positive competitive impact on existing small businesses and on those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The revisions to size standards impose no additional reporting or record keeping requirements on small businesses. However, qualifying for federal procurement and a number of other programs requires that entities register in the System for Award Management (SAM) database and certify at least once annually that they are small. Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with SAM registration or certification. Revising size standards alters the access to federal programs that assist small businesses, but they neither impose a regulatory burden nor regulate nor control business behavior.

4. What are the relevant federal rules, which may duplicate, overlap or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the Federal Register a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's small business size regulations allow federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

<u>List of Subjects in 13 CFR Part 121</u>

Administrative practice and procedure, Government procurement, Government property, Grant programs – business, Individuals with disabilities, Loan programs – business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends part 13 CFR part 121 as follows:

PART 121 – SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

2. In § 121.201, amend the table "Small Business Size Standards by NAICS Industry" as follows:

a. In § 121.201, in the table, revise the entries for “522110”, “522120”, “522130”, “522190”, “522210”, “522220”, “522291”, “522292”, “522293”, “522294”, “522298”, “522320”, “522390”, “523110”, “523120”, “523130”, “523140”, “523210”, “523910”, “523920”, “523930”, “523991”, “523999”, “524113”, “524114”, “524127”, “524128”, “524130”, “524291”, “524292”, “524298”, “525110”, “525120”, “525190”, “525910”, “525920”, “525990”, “551111”, and “551112”.

b. Remove the entry for 525930.

c. Revise footnote 8.

The revisions read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

| NAICS codes | NAICS U.S. industry title | Size standards in millions of dollars | Size standards in number of employees |
|---|---|---|---|
| * * * * * * * | | | |
| 522110 | Commercial Banking [8] | [8]$500 million in assets | |
| 522120 | Savings Institutions [8] | [8]$500 million in assets | |
| 522130 | Credit Unions | [8]$500 million in assets | |
| 522190 | Other Depository Credit Intermediation [8] | [8]$500 million in assets | |
| 522210 | Credit Card Issuing [8] | [8]$500 million in assets | |
| 522220 | Sales Financing | $35.5 | |
| 522291 | Consumer Lending | $35.5 | |
| 522292 | Real Estate Credit | $35.5 | |
| 522293 | International Trade Financing | $35.5 | |

| | | | |
|---|---|---|---|
| 522294 | Secondary Market Financing | $35.5 | |
| 522298 | All Other Nondepository Credit Intermediation | $35.5 | |
| * * * * * * * | | | |
| 522320 | Financial Transactions Processing, Reserve, and Clearing House Activities | $35.5 | |
| 522390 | Other Activities Related to Credit Intermediation | $19.0 | |
| * * * * * * * | | | |
| 523110 | Investment Banking and Securities Dealing | $35.5 | |
| 523120 | Securities Brokerage | $35.5 | |
| 523130 | Commodity Contracts Dealing | $35.5 | |
| 523140 | Commodity Contracts Brokerage | $35.5 | |
| 523210 | Securities and Commodity Exchanges | $35.5 | |
| 523910 | Miscellaneous Intermediation | $35.5 | |
| 523920 | Portfolio Management | $35.5 | |
| 523930 | Investment Advice | $35.5 | |
| 523991 | Trust, Fiduciary and Custody Activities | $35.5 | |
| 523999 | Miscellaneous Financial Investment Activities | $35.5 | |
| * * * * * * * | | | |
| 524113 | Direct Life Insurance Carriers | $35.5 | |
| 524114 | Direct Health and Medical Insurance Carriers | $35.5 | |
| | * * * * * * * | | |
| 524127 | Direct Title Insurance Carriers | $35.5 | |
| 524128 | Other Direct Insurance (except Life, Health and Medical) Carriers | $35.5 | |
| 524130 | Reinsurance Carriers | $35.5 | |
| * * * * * * * | | | |
| 524291 | Claims Adjusting | $19.0 | |
| 524292 | Third Party Administration of Insurance and Pension Funds | $30.0 | |
| 524298 | All Other Insurance Related Activities | $14.0 | |
| * * * * * * * | | | |
| 525110 | Pension Funds | $30.0 | |
| 525120 | Health and Welfare Funds | $30.0 | |
| 525190 | Other Insurance Funds | $30.0 | |
| 525910 | Open-End Investment Funds | $30.0 | |
| 525920 | Trusts, Estates, and Agency Accounts | $30.0 | |
| 525990 | Other Financial Vehicles | $30.0 | |
| | * * * * * * * | | |
| 551111 | Offices of Bank Holding Companies | $19.0 | |
| 551112 | Offices of Other Holding Companies | $19.0 | |

Footnotes

*     *     *     *     *

8. *NAICS Codes 522110, 522120, 522130, 522190, and 522210* – A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. "Assets" for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 041 call report form for NAICS codes 522110, 522120, 522190, and 522210 and the National Credit Union Administration 5300 call report form for NAICS code 522130.

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Dated: June 13, 2013

Karen G. Mills,
Administrator.

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